

FIRST REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 141
95TH GENERAL ASSEMBLY

Reported from the Committee on General Laws, March 12, 2009, with recommendation that the Senate Committee Substitute do pass.

0866S.06C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 210.826 and 210.828, RSMo, and to enact in lieu thereof three new sections relating to paternity determinations.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 210.826 and 210.828, RSMo, are repealed and three
2 new sections enacted in lieu thereof, to be known as sections 210.826, 210.828,
3 and 210.854, to read as follows:

210.826. 1. A child, his natural mother, a man presumed to be his father
2 under subsection 1 of section 210.822, a man alleging himself to be a father, any
3 person having physical or legal custody of a child for a period of more than sixty
4 days or the division of child support enforcement may bring an action at any time
5 for the purpose of declaring the existence or nonexistence of the father and child
6 relationship presumed under subsection 1 of section 210.822.

7 2. An action to determine the existence of the father and child
8 relationship with respect to a child who has no presumed father under section
9 210.822 may be brought by the child, the mother or the person who has legal
10 custody of the child, any person having physical or legal custody of a child for a
11 period of more than sixty days, the division of child support enforcement, the
12 personal representative or a parent of the mother if the mother has died, a man
13 alleging himself to be the father, or the personal representative or a parent of the
14 alleged father if the alleged father has died or is a minor.

15 3. Regardless of its terms, an agreement, other than an agreement
16 approved by the court in accordance with subsection 2 of section 210.838, between
17 an alleged or presumed father and the mother or child, does not bar an action
18 under this section.

19 4. If an action under this section is brought before the birth of the child,

20 all proceedings shall be stayed until after the birth, except service of process and
21 the taking of depositions to perpetuate testimony.

22 **5. In an action to determine the existence of the father and child**
23 **relationship under this section, a notification form, as specified in this**
24 **subsection, shall be attached to the delivery of the petition through**
25 **service of process. The notification form shall prominently state in**
26 **bold face type as follows: "Important Notice. If you do not respond to**
27 **this action, a judgment of paternity will be entered against you and you**
28 **may be ordered to pay child support, medical support, or reimburse**
29 **someone for support previously provided for the child. You have the**
30 **right to contest that you are the father of the named child and you have**
31 **the right to request genetic testing to prove whether or not you are the**
32 **father."**

210.828. 1. An action to determine the existence of the father and child
2 relationship as to a child who has no presumed father under section 210.822 may
3 not be brought later than eighteen years after the birth of the child, except that
4 an action to determine the existence of the father and child relationship as to a
5 child who has no presumed father under the provisions of section 210.822 may be
6 brought by the child within three years after such child attains the age of
7 eighteen.

8 2. A parent's retroactive liability to another party for reimbursement of
9 necessary support provided by that party to the child for whom a parent and child
10 relationship is established under sections 210.817 to 210.852 is limited to a
11 period of five years next preceding the commencement of the action.

12 3. Sections 210.826 and 210.828 do not extend the time within which a
13 right of inheritance or a right to a succession may be asserted beyond the time
14 provided by law relating to distribution and closing of decedents' estates or to the
15 determination of heirship, or otherwise.

16 **4. In an action to determine the existence of the father and child**
17 **relationship under this section, a notification form, as specified in this**
18 **subsection, shall be attached to the delivery of the petition through**
19 **service of process. The notification form shall prominently state in**
20 **bold face type as follows: "Important Notice. If you do not respond to**
21 **this action, a judgment of paternity will be entered against you and you**
22 **may be ordered to pay child support, medical support, or reimburse**
23 **someone for support previously provided for the child. You have the**

24 right to contest that you are the father of the named child and you have
25 the right to request genetic testing to prove whether or not you are the
26 father."

210.854. 1. In the event of the entry of a judgment of paternity
2 and support, a person against whom such a judgment has been entered
3 may file a petition requesting a circuit court with jurisdiction over the
4 subject child or children to set aside said judgment in the interests of
5 justice and upon the grounds set forth in this section. Such a petition
6 shall be filed within eighteen years of the entry of the original
7 judgment of paternity and support and shall be filed in the county
8 which entered the judgment of paternity and support. Any such
9 petition shall be served upon the biological mother and any other legal
10 guardian or custodian in the same manner provided for service of
11 process in the rules of civil procedure. The child or children shall be
12 made a party and shall have a guardian ad litem appointed for the
13 child or children before any further proceedings are had. If the child
14 or children are recipients of IV-D services as defined in subdivision (8)
15 of section 454.460, RSMo, the family support division shall also be made
16 a party and shall be duly served.

17 2. The petition shall include an affidavit executed by the
18 petitioner alleging that evidence exists which was not considered
19 before entry of judgment and either:

20 (1) An allegation that genetic testing was conducted within
21 ninety days prior to the filing of such petition using DNA methodology
22 to determine the probability or improbability of paternity, and
23 performed by an expert as defined in section 210.834. The affidavit
24 shall also allege that the test results, which are attached thereto,
25 indicate that a person subject to the child support payment order has
26 been excluded as the child's father; or

27 (2) A request to the court for an order of genetic paternity
28 testing using DNA methodology.

29 3. The court, after a hearing wherein all interested parties have
30 been given an opportunity to present evidence and be heard, may order
31 the relevant parties to submit to genetic paternity testing upon a
32 finding of probable cause to believe said testing may result in a
33 determination of non-paternity. The genetic paternity testing costs
34 shall be paid by the petitioner.

35 4. Upon a finding that the genetic test referred to herein was
36 properly conducted, accurate, and indicates that the person subject to
37 the child support payment order has been excluded as the child's
38 father, the court shall, unless it makes written findings of fact and
39 conclusions of law that it is in the best interest of the parties not to do
40 so:

41 (1) Grant relief on the petition and enter judgment setting aside
42 the previous judgment of paternity and support, or acknowledgment of
43 paternity under section 210.823 only as to the child or children found
44 not to be the biological child or children of the petitioner;

45 (2) Extinguish any existing child support arrearage only as to
46 the child or children found not to be the biological child or children of
47 the petitioner; and

48 (3) Order the department of health and senior services to modify
49 the child's birth certificate accordingly.

50 5. The provisions of this section shall not apply to grant relief to
51 the parent of any adopted child.

52 6. A finding under subsection 4 of this section shall constitute a
53 material mistake of fact under section 210.823.

54 7. The provisions of this section shall not be construed to create
55 a cause of action to recover child support or state debt, under
56 subdivision (2) of subsection 1 of section 454.465, RSMo, and subsection
57 10 of section 452.340, RSMo, that was previously paid pursuant to the
58 order. The petitioner shall have no right for reimbursement for any
59 moneys previously paid pursuant to said order.

60 8. Any petitioner who has pled guilty to or been found guilty of
61 an offense for criminal nonsupport under section 568.040, RSMo, as to
62 a child or children who have been found not to be the biological child
63 or children of the petitioner, may apply to the court in which the
64 petitioner pled guilty or was sentenced for an order to expunge from
65 all official records all recordations of his arrest, plea, trial, or
66 conviction. If the court determines, after hearing, that the petitioner
67 has had a judgment of paternity and support set aside under this
68 section, the court shall enter an order of expungement. Upon granting
69 of the order of expungement under this subsection, the records and
70 files maintained in any administrative or court proceeding in an
71 associate or circuit division of the circuit court under this section shall

72 be confidential and only available to the parties or by order of the
73 court for good cause shown. The effect of such order shall be to restore
74 such person to the status he or she occupied prior to such arrest, plea,
75 or conviction and as if such event had never taken place. No person as
76 to whom such order has been entered shall be held thereafter under
77 any provision of any law to be guilty of perjury or otherwise giving a
78 false statement by reason of his failure to recite or acknowledge such
79 arrest, plea, trial, conviction, or expungement in response to any
80 inquiry made of him for any purpose whatsoever and no such inquiry
81 shall be made for information relating to an expungement under this
82 section.

83 9. Beginning in 2010, the family support division shall track and
84 report to the general assembly the number of cases known to the
85 division in which a court, within the calendar year, set aside a previous
86 judgment of paternity and support under subsection 4 of this
87 section. The family support division shall submit the report annually
88 by December 31.

Bill ✓

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